IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 17024 of 2006
Date of Decision: 06-12-2007

Shikha Malhotra ....Petitioner

Versus

State Bank of India and another ...Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.
Hon'ble Mr. Justice Mohinder Pal.

Present: Sarvshri I.D. Singla and Vivek Singla, Advocates,
for the petitioner.

Shri Vikas Chatrath, Advocate, for the respondent.

HEMANT GUPTA, J.

The challenge in the present writ petition is to the order dated 18.4.2006 (Annexure P.5), whereby the petitioner was declared unfit for appointment as a Probationary Officer in the service of the respondent-Bank.

Vide advertisement No.CRPD/PO/2005/03 (Annexure P.1), the respondent-Bank invited applications for recruitment of 509 Probationary Officers in the said Bank. The last date for receipt of the applications was 14.7.2005. The written examination was to be held on 11.9.2005. In

advertisement (P.1), there were 12 posts reserved for visually handicapped persons (General Category). The petitioner was one of the selected candidates for appointment as Probationary Officer in the General Category. However, during the course of medical examination, it was found that the petitioner was having an artificial right eye i.e. Prosthetic Shell, whereas the vision of the left eye of the petitioner was 6 x 6 i.e. complete vision. The petitioner was refused appointment on the ground that she was medically unfit. The petitioner was not given the post meant for visually handicapped category as well as the case of the petitioner is not of total absence of sight. Thus, the petitioner was not appointed even as a visually handicapped person. Since the petitioner was not being appointed either as a General Category candidate or as a visually handicapped candidate, the petitioner has invoked the jurisdiction of this Court.

In reply, it has been pointed out that the standard of fitness laid down for new recruits prescribes minimum standard for the eye. Since, the petitioner does not have any vision from the right eye, she is not medically fit for appointment. It is also pointed out that in terms of a the provisions of Section 2(b) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (hereinafter referred to as `the Act') the petitioner cannot be treated as a visually handicapped candidate as well. Therefore, the candidature of the petitioner has been rightly declined.

There was no condition in the advertisement (P.1) in respect of the vision of a candidate or that the medical fitness requires a particular vision. As per the guidelines for the medical examinations of the new

recruits/promotees, the aim of medical examination is that a candidate must be in good mental and bodily health and free from any physical defect "likely to interfere with the efficient performance duties of his/her appointment." The only disability which could be pointed out by the learned counsel for the respondents during the course of arguments for discharge of duties was that due to increase use of computers, the petitioner may not be able to perform her duties. It has been pointed out that one eyed person will not have three dimensional visions, which is considered necessary for the post of Probationary Officer.

However, the said stand of the respondents is nothing but based upon surmises and conjectures. The vision of the petitioner with left eye is 6 x 6 and there is no distortion. Once, the vision of the petitioner in respect of one eye is not wanting in any manner, the denial of appointment on the ground that the petitioner cannot see from other eye is depriving of an appointment to an eligible candidate. If the respondents can appoint a totally blind person as a Probationary Officer, it could not be explained as to why, the petitioner who has 6 x 6 vision from one eye, cannot be appointed. It is not disputed by the learned counsel for the respondents that a candidate who is totally blind or has impaired vision is eligible for appointment against the seats reserved for visually handicapped persons. No doubt, the petitioner is not suffering from a disability within the meaning of Section 2(b) of the Act, but it cannot be said that the petitioner is not eligible for appointment as a general category candidate as well. The petitioner has to fall in one or the other category. If the petitioner is not entitled to reservations for the post meant for visually handicapped category, the petitioner has to be treated as a

general category candidate.

In fact, denial of opportunity of appointment on such ground, is wholly arbitrary, discriminatory and violates the rights guaranteed under Articles 14 and 16 of the Constitution of India. The petitioner is being denied right of appointment for wholly untenable reason. The stand of the respondent is without any justification and is wholly arbitrary and has caused manifest injustice to the petitioner.

Reference may be made to a judgment of the Hon'ble Supreme Court in **Amita Vs. Union of India and another, (2005)13 SCC 721.** In the said case, the candidate was not even premitted to appear as a candidate for appointment to the post of a Probationary Officer. During the pendency of the petition before the Hon'ble Supreme Court, the Union of India has filed an affidavit in respect of certain jobs which could be performed by the visually handicapped persons. Written submissions were filed on behalf of the Union of India, wherein it was stated to the following effect:-

> "It was further stated that the writ petitioner being a visually impaired candidate has to either appear in the examination for selection under the reserved category or she can appear with the general candidates. It was further clarified that if she wants to appear as a general category then she has to compete with the general category candidates only and she cannot be given any weightage as the same would amount to discrimination to others competing with her in the said category. It was further clarified the position that OM No. 36035/4/2003-

> Establishment dated 8.7.2003 provided that the vacancies reserved for any category need to be filled by persons belonging to that category and such vacancies are not open to others. On the other hand, unreserved vacancies are open to all and reserved category candidates cannot be denied the right to compete for appointment against such vacancies, provided they are otherwise eligible."

Considering the stand of the Union of India, the Hon'ble Supreme Court has returned a finding that the nature of duties of a Probationary Officer can be performed by a visually impaired candidate and some percentage of impaired candidates are entitled to be selected and appointed as Probationary Officers of the Bank either from the General Category or from the reserved category. The Hon'ble Supreme Court in the said judgment has observed as under:-

> "That apart, the writ petitioner, although a visually impaired lady had not asked for any special favour for selection to the post of Probationary Officer. The writ petitioner without asking for any favour had only applied for writing the examination for selection not as a reserved handicapped candidate but along with general candidates who were allowed by the Board to sit and write the examination. Since the writ petitioner was similarly situated with other general candidates, and the writ petitioner had not asked for any advantage for being a visually impaired candidate, we failed to understand

> why she was not permitted to sit and write the examination for the post of Probationary Officer in the Bank.
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> At the risk of repetition, it may be reiterated that the writ petitioner fulfilled all the conditions mentioned in the advertisement for the post. The primary object which is guaranteed by Article 16(1) is equality or opportunity and that was violated by the Board by debarring the writ petitioner from appearing in the examination on the mere fact of disability which was not mentioned in the advertisement and which according to the writ petitioner is not an impediment for the post. We are therefore, of the view that the action of the Board was arbitrary, baseless and was in violation of the right of the writ petitioner under Article 16(1) of the Constitution."

In the present case the petitioner has not sought any reservation as a visually handicapped person, therefore, she as a General Category candidate is entitled to be appointed as Probationary Officer.

In view of the above, we have no hesitation in setting aside and quashing the impugned order (Annexure P.5) and to direct the respondents to appoint the petitioner with all consequential benefits. The consequential benefits shall include pay fixation and seniority from the date, the other appointments were made, pursuant to advertisement (P.1). However, the petitioner shall not be entitled to any arrears of salary prior to her appointment. Such directions be complied within a period of two months

from today.

The present petition is allowed in the above terms.

(HEMANT GUPTA
JUDGE

(MOHINDER PAL)
JUDGE

06-12-2007
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